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Attorneys for Defendant Home Depot U.S.A., Inc. (improperly referenced in the Complaint as "The Home Depot.")

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

LUCILLE P. FARRELL SCOTT,

Plaintiff,

v.

THE HOME DEPOT, their agents, Servants, employees, successors and/or assigns, 123 MAINTENANCE COMPANY (1-100), their agents, servants, employees, successors and/or assigns, (said name being fictitious), IVY ACRES, their agents, Servants, employees, Successors and/or assigns, 456 MAINTENANCE COMPANY (1-100) (said name being fictitious), JOHN DOE(S) 1-100 (said name being fictitious), ABC CORPORATION(2) 1-100 (said name being fictitious) and 789 MAINTENANCE COMPANY (1-100) (said name being fictitious),

Defendants

CIVIL ACTION NO.

**NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY**

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §1367, §1332, §1441 and §1446,

Defendant Home Depot U.S.A., Inc. (improperly referenced in the Complaint as "The Home Depot.") ("Defendant") hereby removes this action from the Superior Court of New Jersey, Law

Division, Essex County, Docket Number ESX-L-002957-18 (“the State Court Action”), to the United States District Court for the District of New Jersey. As grounds for removal, Defendant submits the following:

1. On August 17, 2018, Defendant first received notice of the Complaint, filed in the State Court Action on April 25, 2018. A copy of the Complaint and all other relevant pleadings filed in the State Court Action are attached hereto as **Exhibit A** and incorporated herein by reference to this Notice of Removal.

2. This Notice of Removal is being filed pursuant to 28 U.S.C. § 1446(b)(3), providing “if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant... of a copy of an amended pleading, motion, order or other paper from which it may be ascertained that the case is one which is or has become removable.” See, e.g., Delalla v. Hanover Ins., 2009 WL 3379915, at *1 (D.N.J. Oct. 16, 2009).

3. The United States District Court for the District of New Jersey has original jurisdiction over the State Court Action based upon diversity of citizenship under 28 U.S.C. § 1332(a)(1), and accordingly, removal is proper under 28 U.S.C. § 1441(b), as set forth below.

4. There is complete diversity of citizenship, as described below.

- a. Plaintiff Lucille P. Farrell Scott is a citizen of the State of New Jersey, and was a citizen of New Jersey at the time the Complaint was filed.
- b. Defendant Home Depot U.S.A., Inc. (“Home Depot”) is a Georgia corporation with a principal place of business in 2455 Paces Ferry Road, Atlanta, GA 30339. For purposes of diversity jurisdiction, Home Depot is, and was at the time the Complaint was filed, a citizen of Georgia. Home Depot is not a citizen of New Jersey.

5. Plaintiff's original Complaint never asserted the amount in controversy or allegations that her damages exceeded \$75,000.00 and therefore was deemed to be not removable.

6. On October 24, 2018, Defendant requested Plaintiff to provide a written Statement of Damages as required under R. 4:5-2. On January 18, 2019, Plaintiff's counsel served a Statement of Damages, asserting damages in the amount of \$100,000.00. A copy of the Statement of Damages is attached hereto as **Exhibit B**.

7. The January 18, 2019 statement of the amount of damages claimed from Plaintiff's counsel was the first time that Defendant became aware that the amount in controversy exceeded \$75,000.00 and consequently, it became ascertainable that this action is removable, pursuant to 28 U.S.C. § 1446(b)(3) and 28 U.S.C.A. § 1332.

8. The United States District Court for the District of New Jersey has jurisdiction over Essex County, New Jersey, where the State Court Action was filed. Based upon diversity of citizenship, the State Court Action is hereby removed to the United States District Court for the District of New Jersey as the district court having jurisdiction over the place where the action is pending, pursuant to 28 U.S.C.A. § 1332 and 28 U.S.C.A. § 1441(b).

9. This Notice of Removal has been timely filed. Simultaneous with the filing of this Notice of Removal, Defendant has given written notice thereof to the Clerk of the Superior Court of New Jersey, Law Division, Essex County and to Plaintiff in the State Court Action.

10. This Notice of Removal has been signed pursuant to Fed. R. Civ. P. 11.

11. Should any question arise as to the propriety of the removal of this action, Defendant requests the opportunity to brief any disputed issues and to present oral argument in support of its position.

WHEREFORE, Defendant respectfully requests that all persons take notice that the State Court Action, presently pending in the Superior Court of New Jersey, Law Division, Essex County, is hereby removed to the United States District Court for the District of New Jersey.

WONG FLEMING

*Attorneys for Defendant Home Depot U.S.A., Inc.
(improperly referenced in the Complaint as "The
Home Depot.")*

By: /s/ Linda Wong
Linda Wong

CERTIFICATION PURSUANT TO L.Civ. R. 11.2

Pursuant to Local Civil Rule 11.2, I hereby certify under penalty of perjury that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Executed on: January 24, 2019

/s/Linda Wong
Linda Wong